



State Water Resources Control Board



Winston H. Nickox
Secretary for
Environmental
Protection

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In Reply Refer
to: GFW:5626

Chester Bowling, Operations Manager
U.S. Bureau of Reclamation
Central Valley Operations Office
3310 El Camino Avenue, Suite 300
Sacramento, CA 95821

Carl A. Torgersen, Chief
Department of Water Resources
SWP Operations Office
P.O. Box 942836
Sacramento, CA 94236-0001

Dear Mr. Bowling and Mr. Torgersen:

APPROVAL OF WATER LEVEL RESPONSE PLAN REQUIRED BY STATE WATER RESOURCES CONTROL BOARD DECISION D-1641

This letter responds to the Water Level Response Plan (Plan) submitted to the Executive Director of the State Water Resources Control Board (SWRCB) by letter dated June 25, 2003. The Department of Water Resources (DWR) and U.S. Bureau of Reclamation (USBR) prepared the Plan as required by Conditions 1(a)(3) and 2(a)(3) of SWRCB Decision D-1641 (located on pages 150 and 155). In D-1641, the SWRCB conditioned its approval of DWR's and USBR's use of each other's points of diversion in the Delta (referred to as Joint Point of Diversion or JPOD) on several requirements, including a requirement that water levels in the southern Delta are not lowered to a point where local agricultural diversions are impaired by use of the JPOD. The DWR and the USBR may conduct JPOD operations after the Executive Director of the SWRCB has approved all required submittals, including a Water Level Response Plan. Once approved, the DWR and the USBR are required to implement the Plan during JPOD operations or when otherwise specified by the SWRCB (typically during cross-Delta water transfers).

The Plan submitted by letter of June 25, 2003 is intended to replace the Plan I approved on March 12, 2002. On May 28, 2002, the SWRCB denied a petition for reconsideration filed by the South Delta Water Agency (SDWA) and amended my March 12, 2002 approval in SWRCB Order WRO 2002-0003. As amended, the approval was effective through June 1, 2003.

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The SDWA, by letter dated July 3, 2003, submitted comments regarding the proposed Plan. I considered SDWA's comments in deciding to approve the Plan. To ensure that water depth problems requiring dredging are addressed and that water depth forecasting methods are fully tested before I approve the water level response plan for an indefinite term, I am limiting the term of this approval to end before the main 2004 irrigation season.

The proposed Plan is similar to the Water Level Response Plan approved in 2002 and includes conditions similar to the conditions on approval of the 2002 Plan in the March 12, 2002 letter and in Order WRO 2002-0003. The proposed Plan combines the use of tidal barriers to maintain water levels and water level forecasting (performed by DWR) to predict when JPOD operations will affect diverters within the southern Delta. The forecasting procedure has been modified to attempt to predict low water levels near Tom Paine Slough (see SDWA comments below). Finally, the Plan includes provisions for mitigating low water levels (i.e., installing portable pumps or suspending JPOD operations upon the request of SDWA) that are not predicted by the forecasting. Low water level baselines are not defined in the Plan for every location that could be affected by JPOD operations. The DWR and the USBR commit themselves in the Plan to work with SDWA and others to provide mitigation for the incremental effects on diverters of low water levels.

SDWA opposes approval of the proposed Plan based on several arguments that are summarized below:

1. SDWA notes that several southern Delta diverters have experienced water level problems that were not predicted by previous forecasting. With its comments, SDWA included written testimony from a hearing the SWRCB held on April 23 and 24, 2003 regarding a petition for long-term transfer of water by Merced Irrigation District and Modesto and Turlock Irrigation Districts. The written testimony is by three southern Delta diverters who experienced water level problems during previous JPOD operations. Two of these diverters are located on Union Island near Old River, and one is located adjacent to Tom Paine Slough. SDWA asserts that these problems indicate the general failure of previous plans to protect southern Delta diverters.

SWRCB Response: The written testimony submitted by SDWA indicates that in two of the three cases where southern Delta diverters have experienced water level problems in the past, portable pumps or local dredging were provided by DWR and diversions were continued. Thus, SDWA's testimony indicates that when water level problems were experienced, the DWR has been able to mitigate the effects. Additionally, as noted above, the forecasting procedure has been modified to attempt to predict low water levels experienced near Tom Paine Slough. The proposed Plan also provides for the suspension of JPOD operations upon request of SDWA, if water levels of concern continue.

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2. SDWA asserts that during periods of low flow in the San Joaquin River, the tidal barriers are not sufficient protection for southern Delta diverters from reduced water levels resulting from pumping at the Clifton Court Forebay.

SWRCB Response: One of the inputs into DWR's forecasting procedure is the inflow from the San Joaquin River. Thus, the effects of periods of relatively low San Joaquin River inflow to the Delta should be predicted by the forecasting procedure. Additionally, the proposed plan calls for Clifton Court Forebay to be operated consistent with priorities specified in the 1990 Draft Settlement contract between SDWA and DWR. The purpose of these measures is to ensure that the intake pumping at Clifton Court Forebay is timed so that low and high tides are not adversely impacted. The SWRCB recognizes that the forecasting does not always predict low water levels in all locations. While this approval was being prepared, and no JPOD operations were being conducted, unpredicted low water levels occurred in Tom Paine Slough. This approval is conditioned to ensure, to the extent possible, that low water levels do not occur due to JPOD operations. As noted above, I am limiting the term of this approval. This will allow me to again review the effectiveness of the forecasting methods before the next irrigation season.

3. SDWA also notes that dredging of southern Delta channels has not yet commenced (DWR and USBR were required to apply for a dredging permit within 30 days of the date of Order WRO 2002-0003).

SWRCB Response: In their June 25, 2003 letter, DWR and USBR indicate that approval from the Army Corps of Engineers for dredging is anticipated prior to the fall of 2003. My approval of this Water Level Response Plan is based upon dredging commencing as anticipated, including having the appropriate approvals in place.

4. SDWA also objects to the portion of the Plan that requires those diverters requesting mitigation measures to demonstrate a valid right to divert the water during the period that JPOD operations are ongoing. SDWA contends that due to the number of water projects on the rivers tributary to the Delta, it is an undue burden on individual riparian landowners to require them to prove their rights prior to receiving physical assistance.

SWRCB Response: Upon the request of the Division of Water Rights, any diverter of water in California may be required to show evidence of the diverter's basis of right. In this case, my approval of the proposed Plan is conditioned upon a requirement that DWR first provide the requested mitigation and then refer questions regarding the validity of the southern Delta diverter's water rights to the Division of Water Rights for a determination.

Based on my review of the proposed Plan and SDWA's comments, I approve the proposed Plan subject to the following conditions:

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1. With the permission of the agricultural water right holders involved, the DWR and the USBR shall implement modifications to agricultural diversion structures in the southern Delta or shall implement operational changes needed to protect agricultural diversions in the southern Delta if the diverters experience or are likely to experience low water levels due to the incremental impacts of JPOD operations. Modifications may include changes in the intake structures that will facilitate agricultural diversions from shallow water. After implementing these modifications, DWR or USBR may request that the diverters demonstrate to the satisfaction of the Chief of the Division of Water Rights that they have a valid right to the water during the period when low water levels are experienced. The DWR and the USBR will not be required to perform subsequent modifications or maintenance of the modifications at a diversion structure if the diverter fails to demonstrate the existence of a valid water right.
2. The DWR and USBR shall diligently and expeditiously pursue approval of dredging permits from the Army Corps of Engineers so that dredging may commence in the fall of 2003. The purpose of such dredging shall be to ensure that agricultural water diverters have adequate water depths at their points of diversion to divert water during JPOD operations. The DWR and the USBR shall notify the Chief, Division of Water Rights, upon receipt of the permits. No JPOD operations are authorized under this approval after October 1, 2003, unless DWR and USBR have obtained such dredging permits.
3. I am retaining continuing authority over my approval of the Plan for the purpose of requiring changes as needed to meet the conditions in the water rights of the DWR and the USBR on use of the JPOD and to protect the public welfare, protect public trust uses, and prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of the water involved.
4. The DWR and the USBR shall meet all of the commitments stated in the Plan. The commitments in the Plan include, among others, a commitment by the DWR and USBR to work in good faith with local diverters and SDWA to provide portable pumps or suspend JPOD operations when water levels of concern have been experienced. Another commitment is that in the event that the DWR or the USBR conducts JPOD operations pursuant to Condition II(c) in the Plan, the DWR or the USBR will contact potentially affected diverters prior to diverting water under the JPOD, to ensure that the diverters have no plans for diversions during the period of the JPOD diversion. The DWR or the USBR shall promptly demonstrate to both the Chief of the Division of Water Rights and to the SDWA that it communicated with the potentially affected diverters prior to the JPOD diversion, and that the diverters confirmed that they had no plans to divert during the planned JPOD diversion.
5. This approval is based on the continuation of the facilities, Clifton Court Forebay (CCF) operational criteria, and regulatory restrictions on exports that exist as of July 22, 2003. If facilities, CCF operations or export restrictions change, then the DWR and the USBR shall consult with the Chief of the Division of Water Rights to determine whether the Plan requires changes and further approval.

Chester Bowling
Carl A. Torgersen

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With the above conditions, the proposed Plan meets the requirements of D-1641 and is approved through February 29, 2004, subject to DWR and USBR meeting the above conditions and the commitments in the Plan. Prior to February 29, 2004, the DWR and the USBR may, under Conditions 1(a)(3) and 2(a)(3) on pages 150 and 155 of D-1641, seek a new approval of the Plan or may submit for approval a new water level response plan to be in effect on and after March 1, 2004.

If any interested party objects to my decision, the interested party may submit a petition for reconsideration in accordance with Sections 768 and 769 of Title 23 of the California Code of Regulations. A petition for reconsideration must be submitted in writing within 30 days from the date of this letter to:

Mr. Arthur G. Baggett, Jr., Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

If you have any questions regarding this letter please contact Barbara Leidigh, Staff Counsel IV, at 341-5190; or Gita Kapahi, Chief of the Special Projects Unit, at (916) 341-5289.

Sincerely,

ORIGINAL SIGNED BY: HMS
for

Celeste Canti
Executive Director

cc: John Herrick
Alex Hildebrand
South Delta Water Agency
2455 Pacific Avenue, Suite 2
Stockton, CA 95207

bcc: AGB, HMS, Ed Anton, Barbara Leidigh, Vicky Whitney, Jim Kassel, Greg Wilson, GK

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